

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL YABAI,

Plaintiff

-v-

BUILDING SERVICE 32BJ BENEFIT FUNDS,

Defendant,
-----X

ATTORNEY'S
AFFIRMATION

07-CV-7255 (LAP)

MICHAEL GEFFNER, attorney for defendant Building Service 32BJ Benefit Funds,
affirms the following under penalty of perjury:

1. I am the attorney for defendant Building Service 32BJ Funds ("Funds"), and am admitted to practice in the Southern District of New York and the State of New York.
2. I have read the papers submitted by Plaintiff Michael Yabai in opposition to the Funds' motion for summary judgment.
3. Plaintiff has submitted no evidence to contradict the Funds' evidence. The documents he has submitted are the same as those submitted by the Funds in their moving papers and serve to confirm the Funds' argument for summary judgment.
4. Plaintiff attaches a "report from 32BJ", which is the same report the Funds submitted (Exhibit F in the Funds moving papers). Despite Plaintiff's statement that the report indicates 132 months of service credit, the report plainly shows 98 months and no more.
5. Plaintiff also submits the earnings statement from Social Security, also included in the Fund moving papers (Exhibit E). Contrary to Plaintiff's statement, the Social Security documents and the before-mentioned 32BJ report, as reviewed by the Funds, do include the years

1975, 1981 and 1987 as years in which Plaintiff worked, and those years are factored into the total of 98 months' credit. (As explained in the moving papers, the year 1975 was cancelled by Plaintiff's break in service, and consequently does not appear in the report of credit months.)

6. It should be further pointed out that the years set forth in the 32BJ report are fiscal years, not calendar years. Thus, the year 1982, for example, is actually the period July 1, 1981 through June 30, 1982.

7. With respect to the long term disability, Plaintiff's documents contain nothing to indicate that he was totally and permanently disabled at the time he left covered employment in 1991. The only evidence in the record of the onset of his disability is still 1996 or 1997, as set forth in the Funds' moving papers (Exhibits A & H).

8. It is now beyond question that there are no material facts in dispute in this case, and that summary judgment in favor of defendant Funds is in order. Plaintiff has simply failed to offer any evidence that he was eligible for disability benefits under the terms of the benefit plans.

Dated: New York, New York
March 3, 2008



MICHAEL GEFFNER (6785)